this is the case, practically all courts of equity now permit a recovery by an application of the principle of subrogation.[10]

But if the husband's credit is worthless the wife's rights are not, in the absence of statute, adequately protected, for if a divorce or legal separation is not desired she cannot generally enforce her right of support directly against the husband. Some jurisdictions allow a bill in equity for maintenance,[11] but no action at law for damages has ever been given her when there is a breach of the legal duty.[12] In a recent case, a wife, abandoned without just cause, who secured necessaries with the proceeds of her own labor and separate estate, was allowed to recover at law the amount so expended on the ground of subrogation to the rights of the third party furnishing the necessaries. *De Brauwere* v. *De Brauwere*, 44 N. Y. L. J., Nov., 1910 (N. Y. Sup. Ct.). Granting the right of the third party to recover from the husband, and the recognition at law of the doctrine of subrogation, the case is clearly one for the application of the principle that one, other than a mere volunteer, who for his own protection pays a debt which in good conscience should have been satisfied by another, becomes subrogated to the creditor's right against the other.[13] That the wife is not a volunteer in such a case is apparent, since it is only the instinct of self-preservation and not a desire to confer gratuitous benefits which leads her to perform his obligation. Subrogation has been allowed where a third party advances money for necessaries,[14] and certainly the wife should stand in no worse position than any other creditor of the husband.[15] And where a wife becomes liable for the payment of her husband's debt by signing notes as a joint maker with him, it being shown that she is only a surety thereon, a satisfaction of the notes with her own money entitles her to be subrogated to the holder's rights against the husband.[16]

The decision in the main case is based on established legal principles and accords with sound public policy, and it is only the tardiness of the law in coming to such a conclusion that calls for comment. It is submitted, however, that the husband's liability in all these cases should be based on principles of quasi-contract to prevent his unjust enrichment rather than upon the technical doctrine of subrogation.

MAY STATE OF DOMICILE TAX GIFTS MADE ABROAD WHEN THE PROPERTY IS LOCATED ABROAD. — Since the case of *Union Transit Company* v. *Kentucky*,[1] it has been clear that property cannot be taken under the guise of taxation, except where benefit has been conferred by the state upon the person taxed, and that the general benefits conferred by a state upon those domiciled within its borders are not sufficient to support a

[10] Deare *v.* Soutten, L. R. 9 Eq. 151; Kenyon *v.* Farris, 47 Conn. 510. *Contra*, Skinner *v.* Tirrell, 159 Mass. 474. This case may be distinguished on the ground that the money was advanced on the wife's credit.

[11] Galland *v.* Galland, 38 Cal. 265.

[12] Decker *v.* Kedly, 148 Fed. 681.

[13] Cole *v.* Malcolm, 66 N. Y. 363, 366.

[14] Kenyon *v.* Farris, *supra*.

[15] Manchester *v.* Tibbets, 121 N. Y. 219.

[16] *In re* Nickerson, 116 Fed. 1003.

[1] 199 U. S. 194.

tax based in any way upon property permanently located abroad. It seems that this principle must have been overlooked in the recent decision of *In re Buller's Estate*, 128 N. W. 109 (Wis.). Wisconsin, copying the New York statute, has extended the ordinary inheritance tax to gifts in contemplation of death, or to take effect, in possession or enjoyment, at or after the death of the donor.[2] This is proper enough in cases where both the transaction and the property are within the state of Wisconsin, because the right of the sovereign to exact a return for the legal validation of such transactions is well settled. So too the tax would be good, regardless of where the limitation occurred, if the property given were in fact located in Wisconsin.[3] And if the property transferred were stock in a Wisconsin corporation, even though the certificates themselves, and the actual corporate property, and the formal gift were all outside the state, nevertheless the tax could be supported on the ground that the state was exacting compensation from the donee for the privilege of doing business under a limited liability.[4] But the principal case went far beyond any of these. There the donor was, to be sure, domiciled in Wisconsin, but the personal property which was given was at all times located in Illinois. By a deed executed in Illinois, he transferred his property to a resident of Illinois, in trust for named beneficiaries. It is difficult to see how Wisconsin could have any jurisdiction whatever over that transfer. Note that the case is wholly unlike a real descent of personalty. There most jurisdictions permit the estate of a non-resident decedent to be distributed under the laws of his domicile. Thus the state of the domicile actually assists in the transfer, and may properly tax it.[5] But in the case of realty it is well settled that mere domicile gives no right to tax the inheritance, because the transfer of realty is accomplished by the law of its *situs* alone.[6] This transaction *inter vivos* drew its whole validity from the law of Illinois,[7] and, following the analogy of descents of realty, ought to have been subject only to Illinois taxation.

Even though we admit that the intent of the donor was to evade Wisconsin taxes, that ought to make no difference in such a case as this. The intent cannot bring the transaction *inter vivos*, which in fact took place in Illinois, constructively back into Wisconsin, any more than it can bring back to the United States whiskey sent to Germany to escape the Excise Tax.[8]

The doctrine of the principal case amounts to this: that the state of domicile may pursue a man wherever he may go, and tax all his dealings wherever transacted, with personal property wherever situated. The only authority cited that really upholds so remarkable an extension of the taxing power is the following *dictum* by Denio, J.: "Personal property has no locality. It is subject to the law which governs the person of its owner, as well in respect to the disposition of it by act *inter vivos*, as its

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[2] SANBORN'S STATUTES SUPP. (Wis. 1906), § 1087–1.

[3] Matter of Morgan, 150 N. Y. 35; Hoyt *v.* Tax Commissioners, 23 N. Y. 224.

[4] Matter of Bronson, 150 N. Y. 1.

[5] *In re* Estate of Swift, 137 N. Y. 77; *In re* Corning's Estate, 23 N. Y. Supp. 285.

[6] *In re* Estate of Swift, *supra*.

[7] Thus the validity of a gift *causa mortis* is determined by the law of the place where it is made, and not by the law of the domicile of the maker. Emery *v.* Clough, 63 N. H. 552.

[8] Selliger *v.* Commonwealth of Kentucky, 213 U. S. 200.

transmission by will." [9] This statement, so far as it relates to transactions *inter vivos* was a *dictum*, conspicuously *obiter*, unsupported by the authorities cited,[10] and palpably erroneous in view of modern decisions.[11]

APPORTIONMENT OF AN ANNUITY BETWEEN CAPITAL AND INCOME. — In the settlement of estates the contingent and deferred nature of life [1] annuities has frequently made the application of well-established principles extremely difficult. Annuities may be granted during the life of the testator or he may bequeath them as legacies. In the latter case the problem resolves itself into an attempt to determine his exact intention. Did he intend the annuity to be charged on his realty,[2] or personalty,[3] on the income,[4] or the *corpus* [5] of his estate; or that the annuitant might demand security for the payment of the future instalments of the annuity,[6] or compel its commutation into a lump sum? [7] In England the custom of granting marriage portions in the form of life annuities frequently brings up the former case. As the annuity is charged in the lifetime of the testator, his death leaves it as a debt upon his estate.[8] When the residuary estate is divided between a tenant for life and a remainderman the method of its payment has so perplexed the courts that two distinct rules [9] have sprung up, both professing to be the exemplification of the same legal principles.

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[9] Parsons *v.* Lyman, 20 N. Y. 103, 112. Cited in Cross *v.* Trust Co., 131 N. Y. 339, and in *In re* Corning's Estate, 23 N. Y. Supp. 285. See also Edgerly *v.* Bush, 81 N. Y. 199.

[10] The authorities he cited bore only on the real point of that case, namely, that in cases of descent by will or otherwise, the law of the domicile usually prevails. But note that this is not necessarily so. In fact in Illinois, where this transaction occurred, personalty descends by the law of Illinois regardless of the domicile of the owner. Cooper *v.* Beers, 143 Ill. 25. Hence, even if this had been a transfer by descent instead of a transfer *inter vivos*, it would seem that Wisconsin could not have taxed the transfer because the law of Wisconsin did not assist in it. There is no case directly in point, but this is the inevitable conclusion of the reasoning in *In re* Estate of Swift, *supra*.

[11] Emery *v.* Clough, 63 N. H. 552; Cooper *v.* Beers, *supra;* McCollum *v.* Smith, Meigs (Tenn.) 342; Cammel *v.* Sewell, 5 H. & N. 728; Marvin Safe Co. *v.* Norton, 48 N. J. L. 410; Harvey *v.* Richards, 1 Mason (U. S.) 381. The inaccurate statement that the tax is a tax on the right to "receive" property makes it doubtful whether the court did not attach some weight to the fact that the donees were residents of Wisconsin. It is hard to see how such reasoning could be supported. See Matter of Green, 153 N. Y. 223.

[1] It seems interesting to note that the British "consols" are perpetual annuities. The theory is that the Government need never return the principal but must continue to pay the income forever. Statutes 27 Geo. II, c. 27. Obviously, they involve no contingency.

[2] *In re* Nathan's Estate, 4 Pa. Dist. R. 149; Ley *v.* Ley, L. R. 6 Eq. 174.

[3] Paget *v.* Hurst, 9 Jur. N. S. 906.

[4] Baker *v.* Baker, 6 H. L. Cas. 616; Nudd *v.* Powers, 136 Mass. 273; Irvin *v.* Wollpert, 128 Ill. 527; Delaney *v.* Van Aulen, 84 N. Y. 16.

[5] Howarth *v.* Rothwell, 30 Beav. 516; Pierrepont *v.* Edwards, 25 N. Y. 128; Byam *v.* Sutton, 19 Beav. 556; Phillips *v.* Gutteridge, 3 De G. J. & S. 332; Peason *v.* Hellliwell, L. R. 18 Eq. 411; *In re* Watkins Settlement, 55 Sol. J. 63, 73.

[6] Morgan *v.* Pope, 7 Coldw. (Tenn.) 541; *In re* Parry, 42 Ch. D. 570.

[7] Wakeham *v.* Merrick, 37 L. J. Ch. 45; Ford *v.* Batley, 17 Beav. 303; Stokes *v.* Cheek, 28 Beav. 620.

[8] *In re* Poyser, [1908] 1 Ch. 828.

[9] Rule I. — Calculate what sum if set aside at the testator's death would, with